

REMARKS

Claims 1 to 15 and 18 are pending in the present application and have been examined on their merits. By this amendment, claim 18 has been cancelled and claims 1, 13, and 14 have been amended.

Claim Rejections

The Examiner has correctly noted that claim 18 is dependent upon previously cancelled claim 17. By this Amendment, claim 18 is cancelled correcting this issue.

The rejection of claims 1 to 15 under 35 U.S.C. §103(a) as being unpatentable over d'Eon *et al.* (U.S. Pat. No. 6,006,197) has been upheld by the Examiner. This rejection is in error.

The Applicant thanks the Examiner for the courtesy of a telephone conversation of 8 December 2001 wherein it was noted that clarification of Applicant's element of modifying ads/marketing communications while such ads/marketing communications were still occurring would be appropriate.

It is the Applicant's position that the invention is not made obvious by the d'Eon *et al.* patent. This patent, directed to a web advertising measurement system, does not disclose the parameters of the claimed invention. The Examiner notes that d'Eon *et al.* does not teach reacting to the evaluation found as a critical limitation of all of the Applicant's independent claims [i.e., claims 1, 13, and 14]. The Examiner holds the position that it would be obvious to one of ordinary skill in the art at the time of the invention to use the teaching of d'Eon *et*

al. to fill this void and react to evaluation by modifying, if necessary, marketing communications activity. The Applicant respectfully disagrees.

While modification of d'Eon *et al.* as suggested by the Examiner would appear to follow where measurement of the effectiveness of completed advertisement/marketing communication programs (i.e., web advertisements) is taught, this is distinguishable from the Applicant's invention. The Applicant's invention provides methodology for evaluating and modifying marketing communications to improve effectiveness while the marketing communications are still occurring or ongoing. This is quite different from measuring the effectiveness of a banner (i.e., correlating web impression with product purchases or other post-impression transactional activities) and taking some action (i.e., canceling under-performing or ineffective advertisements).

By the present Amendment, the Applicant has modified independent claims 1, 13 and 14 so as to more clearly distinguish from the art and to more clearly identify the importance of continuous interactivity (i.e., ongoing evaluation of marketing communications) and modifying marketing communications while they are occurring. As noted by the Applicant (c.f., page 10, lines 8-15), with the continuous interactivity of present invention it is not necessary to wait for the completion of marketing campaigns over fixed-term or pre-determined spaced time intervals.

The "gap" between Applicant's invention and the art cannot be filled by reasonably modifying d'Eon *et al.* or by the general knowledge of those or ordinary skill in the art. The teaching of d'Eon *et al.* does not contemplate, disclose or suggest continuous interactivity and rapid reacting to marketing communications activities while they are occurring. Also, the prior art cited by the Examiner does not teach, suggest or inherently yield the asserted advantages and improved results of interactive rapid response marketing that are disclosed and presently claimed by Applicant. The cited art clearly does not

suggest, provide motivation for, or arrive at Applicant's invention. Should Applicant's independent claims (i.e., 1, 13 & 14 as amended) be found allowable, so also should claims dependent thereon be allowed.

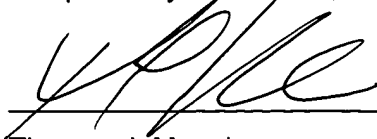
In light of the discussion of art as related to the present invention and the presently amended claims, the Applicant respectfully submits that the prior art does not either suggest Applicant's invention or teach its critical elements. In addition, there is no suggestion or motivation, either in the d'Eon *et al.* reference or in the general knowledge of those skilled in the art, to modify d'Eon *et al.* with a reasonable expectation of success to arrive at the claimed invention. The Applicant's continuously interactive rapid response marketing system and method for optimizing marketing communications activity is not only novel but unobvious. Accordingly, the Applicant request that the rejection under 35 U.S.C. §103(a) as applied to pending claims, be reconsidered and appropriately withdrawn.

In view of the above remarks responsive to the Final Office Action, the Applicant believes that the rejection under 35 U.S.C. §103(a), as applied to pending claims, should be reconsidered and withdrawn. The claims as currently presented distinguish from the cited art and represent patentable subject matter. Reconsideration and allowance, being in order, are earnestly solicited. Should there be further issues, the undersigned would welcome a telephone call to facilitate their resolution.

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Respectfully submitted,

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